

**BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI**

I.A., S.R. No. 0530 of 2019
In
C.C.P. No. 095 of 2018

Dated the 5th day of November, 2019

M/s. Phoenix Serene Spaces Pvt Ltd.,
Rep. by Authorized Signatory Petitioner /Respondent

-Vs-

Karthisanker K. M **AND** Nirmala G. Respondents/Complainants

The above petition filed by the petitioner/respondent in the main complaint seeking to set aside the ex-parte order dated 24.06.2019 passed by this Forum, came up for hearing on 24.10.2019 and after hearing both the sides and having perused the documents, this Forum passed the following:

ORDER

2. The case of the petitioner in brief as follows:

(a) The petitioner is the respondent/builder in the main complaint. The affidavit of the authorized signatory of the petitioner/complainant is filed in support of the petition. The petitioner has not received any notice to the proceedings from the authority. The petitioner verified the inward register maintained at their office and found no notice was received by the office.

(b) In another case filed by one Dominic Savio in CCP No.065/2019, the petitioner appeared and contested the case and came to know about the present case through the said Dominic Savio. On the basis of information furnished by the said Dominic Savio, the petitioner through his Counsel

verified and came to know on 08.07.2019 about the order dated 24.06.2019 passed in this case.

(c) The petitioner has been deprived of an opportunity to contest the case and to show that this petitioner/respondent is not at fault and an adverse order has been passed against them. The non-appearance of the petitioner is neither willful nor wanton but only due to bonafide circumstances. Hence the petition.

3. The respondents/complainants has not filed counter. However, the counsel for the respondents raised serious objections as the petition is not maintainable under the provision of RERA Act.

4. On consideration of rival contentions of both sides, the following points arise for consideration.

i. Whether the petition is to be allowed?

5. Answer for Point No. (i):

(a) The learned counsel for the petitioner submitted that the head office of the petitioner company is at Hyderabad and the Site Office/Branch Office is situated at Chennai and notice was not received by the petitioner company either at Hyderabad or in Chennai and the petition is maintainable in the interest of justice and the petition is to be allowed. The learned counsel also relied various decisions in support of his contentions.

(b) The learned counsel for the respondents/complainants vehemently opposed the application and submitted that no ex-parte order was passed by this Forum and notice was served on the petitioner and this Forum passed the order on the merits of the case and there is no provision to set aside the order of this Forum as an ex-parte order under the RERA Act and the Rules and the petition is liable to be dismissed.

(c) On perusal of the records of the case, it is seen that notice of hearing of the case by registered post with acknowledgement was sent to the petitioner company to their office address at Hyderabad and the receipt of the notice is acknowledged by the official of the petitioner company with affixture of company's seal on 26.03.2019. The service of notice was to the same address mentioned in the affidavit of the petitioner. Therefore, the contentions of the petitioner's counsel that no notice was served is not found correct.

(d) This petition has been filed under section 38(2) and 39 read with 71 of the RERA Act. Section 38 deals with powers of the authority and Section 39 is relating to rectification of orders passed by the authority. Section 71 deals with powers of the Adjudicating Officer to adjudicate. Therefore, Section 38 or 39 does not relate to the powers to adjudicate by the Adjudicating Officer. Sections 38 and 39 cannot be invoked before the Adjudicating Officer.

(e) Rule 38 of the TNRERA Rules deals with the manner of filing complaint with the Adjudicating Officer and the manner of holding an enquiry by the Adjudicating Officer. As per 38 (2) (g), if any person fails, neglects or refuses to appear or present himself as required before the Adjudicating Officer, the Adjudicating Officer shall have the power to proceed with the enquiry in the absence of such person after recording the reasons for doing so. The rule further provides to pass orders on merits of the case.

(f) In the decision in B. Nagaraj **vs.** Green Earth Biotechnologies Limited reported in 2016-5-L.W.517, the Hon'ble High Court held that the Consumer Protection Forum has power to decide a complaint of ex-parte under Rule 8 (8) and 8(9) and it automatically implies that it has power to set aside an ex-parte orders. So far as TNRERA Rules is concerned, there is no such rule.

(g) In other decisions of the Hon'ble Supreme Court and Kerala High Court, the decisions are regarding the rules under the particular Act and therefore the decisions are not applicable to the present case.

(h) The learned counsel also relied on the decision of the Adjudicating Officer, RERA, Chandigarh in Complaint No.47/2018 where the complainant pleaded no objection for setting aside the ex-parte proceedings and also the decision in complaint No.AO/26/2018 by the Adjudicating Officer, RERA, SAS Nagar, where the ex-parte proceedings were stated to have been set aside on cost. Both the decisions were not on merits or on the basis of any rules framed under the RERA Act. Therefore, the said decisions are not applicable to the case.


(i) Since the order passed by this Forum is an order on merits of the case on consideration of evidence and documents filed by the complaint and there is no provision for setting aside the order either in the Act or Rules, this petition deserves to be dismissed. Thus the point is answered accordingly.

In the result, the petition is dismissed. No costs.

CERTIFIED TO BE TRUE COPY

Sd/- 05.11.2019
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


5/11/2019